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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

In the Matter of

Definition of Markets for Purposes of the  
Cable Television Mandatory Television  
Broadcast Signal Carriage Rules

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CS Docket No. 95-178

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**FEB 26 1996**

To: The Commission

**REPLY COMMENTS OF**  
**WRNN-TV ASSOCIATES LIMITED PARTNERSHIP**

WRNN-TV Associates Limited Partnership, the licensee of WRNN-TV, Kingston, New York ("WRNN"), by counsel and pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. § 1.415(c) (1995), hereby submits its reply to the comments filed on the Notice of Proposed Rule Making ("*NPRM*") in the above-referenced docket.<sup>1/</sup>

WRNN is a commercial television station licensed to serve Kingston, New York, which is located in the New York, NY television market (both Arbitron's Area of Dominant Influence or "ADI" and Nielsen's Designated Market Area or "DMA") for the purposes of the must-carry rules. The must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992 and the Commission's implementing regulations,<sup>2/</sup> combined with the related change in the copyright laws which allows for copyright-free carriage throughout a station's must-carry

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<sup>1/</sup> Notice of Proposed Rule Making, Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, CS Docket No. 95-178, FCC 95-489 (December 8, 1995). These Reply Comments are timely filed pursuant to the dates set by Public Notice, Report No. CS 96-3, DA 96-23 (January 16, 1996).

<sup>2/</sup> 47 U.S.C. § 534 (Supp. V 1993); 47 C.F.R. §§ 76.55-.62.

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market,<sup>3/</sup> has permitted WRNN to deliver its unique local station programming market-wide.<sup>4/</sup> Since its acquisition of the station approximately two years ago, WRNN has transformed its format and station identity into "**RNN**," or "Regional News Network," the only news service covering the entire New York, New Jersey, and Connecticut region with station-originated news and localized interactive talk programming responding directly to the needs and interests of all New York, NY television market viewers. **RNN** now broadcasts 13.5 hours each weekday of original, locally produced news, public affairs, sports, informational and other locally-directed programming, airing primarily in prime time, for a total of 67.5 hours, Monday-Friday. **RNN**'s news bureaus located in Kingston, NY, Piscataway, NJ, and Stamford, CT originate substantial local interest stories inspired by WRNN's formal ascertainment of market-wide community leaders. In addition, WRNN, in conjunction with local school boards, has created the New York, NY television market's premier regional interactive, educational program specifically exploring issues directed to children ages 12 to 16. WRNN is committed to continuing its multi-million dollar investment in quality local and educational programming as cable operators market-wide add WRNN to their channel line-ups.

Review of the Comments in this proceeding confirms that the Commission's first proposal for defining the relevant must-carry market for the upcoming must-carry/retransmission consent election period -- an immediate switch to Nielsen's DMAs -- is the option preferred by

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<sup>3/</sup> Satellite Home Viewer Act of 1994, Pub. L. No. 103-369 §3(b), 108 Stat. 3477, 3481 (1994), amending 17 U.S.C. § 111(f).

<sup>4/</sup> WRNN has invested millions of dollars to deliver a good quality signal to all cable headends in the New York, NY television market using such vehicles as a low power television station and fiber optics.

the majority of commenters.<sup>5/</sup> In that regard, WRNN questions the basis of the cable industry's alleged concern that switching to triennial market revision would be disruptive to service.<sup>6/</sup>

Revising the market definitions once every three years to adjust for market realities is a far less disruptive (and more accurate) method of replicating market forces than Section 614(h) market modification proceedings which the cable industry admittedly files merely to avoid carriage of a must-carry station.<sup>7/</sup> In any event, should the Commission revise its proposed rule to define a television station's market using DMAs, WRNN urges the Commission to assure that the most recently published Nielsen listing is used for any particular must-carry/retransmission consent election year.<sup>8/</sup>

WRNN also noted an underlying theme throughout the Comments -- that whatever market standard is chosen, such market definitions alone are not the fairest method of defining a "local" station for the purposes of must-carry,<sup>9/</sup> and that a goal of the FCC's adopted rule should

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<sup>5/</sup> WRNN counts 14 Comments supporting the switch to DMAs, and only 6 supporting the FCC's "tentative view" of freezing the 1991-92 ADI market definitions.

<sup>6/</sup> See, e.g., Comments of Cole, Raywid & Braverman at 3-6; Comments of Cox Communications, Inc. at 4-5.

<sup>7/</sup> See, e.g., Greater Worcester Cablevision, Inc., 10 FCC Rcd 12569, 12574 (CSB 1995); Fouce Amusement Enterprises, Inc., 10 FCC Rcd 668, 672 (CSB 1995).

<sup>8/</sup> See Comments of NAB at i, 2, 13. See also, e.g., Joint Comments of Evening Post Publishing Co. *et al.* at 3 (shift to DMA best replicates Congressional intent); Comments of Costa de Oro Television, Inc. at 4 (must-carry/retransmission election process "is of no significance if parties are locked into a changed marketplace without being able to make use of the changes").

<sup>9/</sup> See, e.g., Comments of the Cable Television Communications Association at 2-3 (referring to "the inequities of using ADIs (or for that matter DMAs) to define whether a station is 'local.'").

be to “avoid placing unnecessary emphasis on arbitrary market definitions.”<sup>10/</sup> Indeed, the Commission itself admits that “the market definition process is somewhat circular.”<sup>11/</sup> Since the *NPRM* at ¶ 7 asks for “suggestions for any other alternatives that would better accomplish the market definition objectives of the must-carry provisions,” WRNN would like to suggest an additional revision to the Commission’s must-carry market rules, one foreshadowed by Chairman Hundt in the Capital Cities/ABC, Inc./Walt Disney Company merger decision released just three days after the Comments were due in this proceeding. In his separate statement, the Chairman emphasized the need for all of the Commission’s rules to include mechanisms that “create clear and sufficient incentives for broadcasters to provide public interest programming.”<sup>12/</sup> Indeed, in the market modification context, which is inextricably intertwined with the market definition being decided in this rulemaking, where “localism” is the touchstone of analysis, the Commission’s decisionmakers have not to date explicitly rewarded broadcasters for committing to provide substantial amounts of children’s educational television, or other programming that Congress or the Commission have specifically found to serve the public interest.<sup>13/</sup>

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<sup>10/</sup> Comments of the Small Cable Business Association (“SCBA”) at 3.

<sup>11/</sup> *NPRM* at n.9; see also Comments of United Communications Corporation at n.3; Comments of SCBA at 6.

<sup>12/</sup> Capital Cities/ABC, Inc., Memorandum Opinion and Order, FCC 96-48 (released February 8, 1996) (separate statement of Chairman Reed E. Hundt at 5) (hereinafter “*Hundt Statement*”).

<sup>13/</sup> Cf. id. (wherein Chairman Hundt registered his concern over “the failure of our rules clearly to reward broadcasters for committing to provide substantial amounts of children’s educational television, airtime for political candidates, or other programming that Congress or the Commission have specifically found to serve the public interest.”).

Therefore, one way to break the circularity and arbitrariness of market definitions is for the Commission to revise Section 76.59 of its rules to add an explicit statement that in determining modification of television markets, broadcasters who otherwise qualify for must-carry (i.e., located in the relevant television market, delivers adequate signal, not duplicated by any other signal, cable operator not at must-carry capacity) and pledge to provide concrete amounts of public interest programming receive added preference to full market-wide carriage irrespective of any other factors in the market modification analysis.<sup>14/</sup> Although the Chairman's admonition was directed to revision of the broadcast ownership rules, it applies here equally, if not more so, in a context where Congress determined that "an affirmative must-carry requirement is the only effective mechanism to promote the overall public interest."<sup>15/</sup> Furthermore, just as the ownership rules are explicitly designed to achieve diverse content,<sup>16/</sup> the must-carry rules are similarly designed with that goal in mind.<sup>17/</sup> It is plausible that permitting market-wide carriage that would otherwise be barred based on commitments to provide public interest programming

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<sup>14/</sup> This suggestion underscores the concept that when deciding market modification cases, the ADI or DMA is the focus (as compared to using a de facto Grade B standard, for example). If a station is making the effort to serve the entire market with investment in technology and programming, it should be available to all cable subscribers market-wide pursuant to must-carry. This is all the more important a consideration when the station in question makes an effort to delivery quality local educational television, or other programming that serves the public interest.

<sup>15/</sup> H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 75 (1992).

<sup>16/</sup> *Hundt Statement* at 5.

<sup>17/</sup> S. Rep. No. 92, 102d Cong., 1st Sess. 42 (1991) (absent the must-carry law, "the local off-air broadcast system is endangered, thereby threatening *diversity of choice* not only for cable subscribers, but also for those who do not subscribe to cable") (emphasis added).

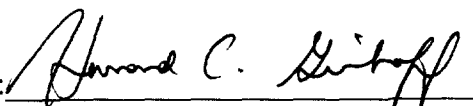
would significantly further this objective of content diversity.<sup>18/</sup> The Commission should have clear rules encouraging that commitment and can take this opportunity to include such rules. Just as the Chairman would allow the Commission to grant an otherwise potentially ungrantable media cross ownership interest in exchange for children's television and public interest programming pledges, the Commission should give the same deference to television operators such as WRNN who are committed to broadcasting locally produced children's television and public interest programming, and assure these operators of market-wide carriage. Not recognizing a station's public interest service to its community runs contrary to Commission policy regarding a licensee's public interest obligations; reinforcing the public interest in market determinations is the surest way for the Commission to break the arbitrariness and circularity of the market definition.

For the above stated reasons, WRNN respectfully urges the Commission to adopt its regulations regarding the definition of markets for purposes of the cable television mandatory television broadcast signal carriage in accordance with the above views.

Respectfully submitted,

**WRNN-TV ASSOCIATES LIMITED  
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Dated: February 26, 1996  
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<sup>18/</sup> Cf. Hundt Statement at 5-6.

## **CERTIFICATE OF SERVICE**

I, Renee Gray, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 26th day of February, 1996, I served a true copy of the foregoing **"REPLY COMMENTS OF WRNN-TV ASSOCIATES LIMITED PARTNERSHIP"** by hand delivery, upon the following:

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